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NO. 2443.

United States Circuit Court of Appeals for the Ninth Circuit.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

v.

THE SOUTHERN PACIFIC COMPANY, DEFENDANT IN ERROR.

SUPPLEMENTAL BRIEF OF ~~DEFENDANT~~ Plaintiff IN ERROR.

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ARGUMENT.

I.

Supplemental to the brief originally filed in this case the attention of the court is respectfully called to the following considerations:

Broadly stated, the question involved is: Is the mere happening of a break-in-two of a train an unavoidable accident; and if so, may a carrier keep a train crew on duty for more than 16 hours if such crew has been delayed by such break-in-two without showing by the carrier that such occurrence was without its negligence and without any showing on its part that it was not practicable to relieve such train crew after its detention by reason of such occurrence and before they had been on duty for more than 16 hours? Or, may a railroad after delay so caused permit the crew of a train so delayed to remain on duty without limit as to hours

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of service and without showing an effort or diligence to relieve them?

Under decisions of the Supreme Court, of this court, and of all other courts where the subject has been considered, this statute is entitled to a broad and liberal construction as a remedial act passed to meet a situation of danger to employees and the traveling public.

Judge Amidon in *United States* v. *Minn. St. Paul & Sault Ste. Marie Ry. Co.,* January 21, 1913 (not officially reported), said:

> No truth of science, however, is better established than that fatigue is not simply a matter of muscles, but that it involves nerves and brain as well, and extends to all the faculties of the mind itself. It produces physiological changes which deaden the will and impair the sense of sight and hearing. It is as truly a physical cause of accident as are open switches and broken rails.

And so it seems to follow that no construction, literal or otherwise, is to be followed which would leave unaffected or unimpaired the *actual menace* at which the legislation was aimed.

The defendant in its answer admits continuous service of the train crew here in question for 17 hours and 30 minutes and pleads unavoidable accident.

Under the adjudication of the courts this answer is insufficient, and the demurrer thereto should have been sustained.

In the case of *United States* v. *Kansas City Southern Railway* (202 Fed. 828), the court said in reference to the proviso in the act relative to casualty, unavoidable accident, or act of God, " to bring it within the exceptions stated, the carrier must be held to as high a degree of diligence and foresight as may be consistent with the object aimed at and the practical operation of its railroad."

The Government in this case contends that unless the *service* in excess of 16 hours *necessarily* results from the casualty the statutory limitation of the hours of service is applicable.

The safety of the public involved and the wording of the proviso, construed according to the purpose and object of the law, seems to justify this contention.

The part of the proviso on which the defendant relies reads as follows:

> That the provisions of this act shall not apply in any case of casualty or unavoidable accident or act of God.

The general wording of this proviso necessarily calls for restriction and limitation.

Excess service is not excused by reason of a casualty or unavoidable accident happening at any time or at any place. The proviso seems to call for the construction that it applies only to casualty or unavoidable accident which, from its location or time of occurrence, necessarily causes excess service of the particular employees in question.

Because of the generality of its literal terms, the proviso must necessarily be restricted in its scope to save the statute from being overwhelmed in the exception.

The limited and restricted construction to be given in the proviso in a remedial statute which creates exceptions to a general rule laid down therein is a recognized rule of construction. *United States* v. *Dickson* (15 Pet., 141, 165), as quoted in the original brief on page 14.

The Government's contention is that the casualty must be one that necessarily causes excess service, and this seems to be justified by the opinion of Circuit Judge Lurton, afterwards Justice of the Supreme Court, in a case under the 28-hour law cited in the original brief (page 25), "It must appear that the storm '*prevented*' obedience."

If the casualty had no necessary connection with the excess service, Congress surely did not intend to permit service beyond the period fixed by it as a maximum in the interest of safety.

If, in the exercise of the high degree of diligence which the subject involved demands, such excess service may be guarded against even if a casualty or an unavoidable accident has occurred, then there is no necessary connection between the casualty and the excess service.

This court has substantially pointed out the line of demarcation in the recent case of the *United States* v. *Northern Pacific Railway Company,* de-

cided August 3, 1914. In that case the railroad was released from liability because of an accident which the court said was the "*sole cause*" of the excess service.

There a critical continuing emergency resulting from a casualty involving the death of and injury to passengers prevented the train dispatchers from relieving the train crew in question. This court, however, said, "Undoubtedly the train dispatchers, both at Tacoma and Portland, *would, under ordinary conditions, be held* to have known that the delay of train No. 303 at South Tacoma and the transfer of its crew and passengers to train No. 314 could not have enabled them to reach Portland in time for the same crew to return to Tacoma on its regular train No. 308 without being kept on duty for more than 16 hours without a consecutive rest of 8 hours.."

This court, in describing the conditions of affairs existing in the Northern Pacific Company case, used the expression "where necessarily growing out of such a disaster." The words "where necessarily growing out of such a disaster," used by the court may not, from their context, have the application which the Government is now seeking to have made, but they are apt words to express clearly the conditions when a casualty will excuse under this act. Where *necessarily* growing out of such a disaster the condition of affairs was such that there was no reasonable opportunity to relieve the men,

the statute may not apply. But where excess service does not necessarily grow out of disaster, but grows out of a neglect to relieve the train crew when such relief was reasonably accessible, or would have been accessible if the standard of care required under the circumstances had been exercised, the carrier is not excused from liability under the act.

On this aspect of the case we get some light from the opinion of Chief Justice White in the case of *Northern Pacific Company* v. *The State of Washington* (222 U. S., 370), in which reference is made to the extended time given for the act to go into effect for the purpose of enabling railroads to meet the " changed conditions " arising from the act.

And the opinion quotes from the report of the congressional committee in substance to the effect that railroads, in many instances, would be required to change division points to comply with the provisions of the act.

When the act became operative it was incumbent upon the railroads to have division points so placed that the relief of train crews would be made practicable in order to prevent service in excess of 16 hours.

It may well be that a casualty may be the necessary cause of *delay* and not the necessary cause of *excess service.*

To establish a defense, railroads must show that the excessive service performed was a necessary consequence of the casualty. If the men could have

been relieved, then the excess service was not a necessary consequence of the casualty.

It has been one of the ordinary instances of railroading, since this act went into effect, to send employees from one station or division point to another in order to relieve train crews and avoid excess service.

The mere recital in an answer of delay to a train caused by unavoidable accident is not sufficient of itself to establish a defense. The defendant must go further and establish a causal connection between the unavoidable accident and the excess service in question.

Rulings of the Interstate Commerce Commission.

But it is said that the rulings of the Interstate Commerce Commission are in conflict with the contention here made by the Government.

The *first* ruling of the Interstate Commerce Commission upon this subject is under date of March 16, 1908, and the material portion is as follows:

> The instances in which the act will not apply include only such occurrences as could not be guarded against; those which involved no neglect or lack of precaution on the part of the carrier, its agents, or officers; and they serve to waive the application of the law to employees on trains only until such employees, so delayed, reach a terminal or relay point. (See rule No. 88.)

This seems to set up a standard of diligence and to express an opinion that excess service is justified

under the proviso only where such excess service can not be guarded against and where there is no lack of precaution, and then only to enable a train crew to reach a terminal or relay point.

All the subsequent rulings of the Commission on this subject must be read in the light of this first one which remains unaffected by any modification or withdrawal.

As far as this ruling raises the standard of diligence and absence of negligence it seems to have been fortified judicially by the decision of the Eighth Circuit Court of Appeals in *United States* v. *Kansas City Southern Railway* (202 Fed., 828) where the court said:

> By this act it (Congress) sought to prevent railroad employees from working consecutively longer than the period prescribed, as completely and effectively as could be accomplished by legislation. To bring itself within the exceptions stated, the carrier must be held to as high a degree of diligence and foresight as may be consistent with the object aimed at and the practical operation of its railroad.

And this high degree of diligence has been held by several district courts (in cases cited in our original brief) to require the release or tying up of crews to prevent excess service, and this even when such train has been delayed theretofore by an excusable cause.

There is only one reported case to the contrary and that is the case decided by Judge Sawtelle,

United States v. *Atchison, Topeka & Santa Fe* (212 Fed., 1000). In that case the learned judge reached a conclusion adverse to the Government's contention in case at bar, and insists upon the "plain wording" of the proviso in section 3 (p. 1004). He seems to overlook the well-recognized ruling of the strict construction of the proviso carved out of a remedial act.

The "plain wording" of the proviso "in any case of casualty or unavoidable accident" gives no guide as to whether these words apply to crews of trains directly involved in such casualty, or whether they include crews of trains who are only indirectly involved. The plain words do not make clear the *extent* to which train crews involved may be relieved by the occurrence of casualty or unavoidable accident or whether the casualty delaying a train crew for one hour may excuse excess service for several hours, or whether or not the application of the act is suspended only so far as the casualty necessarily and unavoidably prevents compliance, taking into account the practical difficulties arising in operation of railroads, and bearing in mind the purpose and object of the act to which the proviso established exceptions.

As the plain wording of the proviso does not suffice, the Government contends for the latter construction which will carry out the purpose and intent of the act.

The comment of the learned judge in the Santa Fe case just referred to upon the rulings of the In-

terstate Commerce Commission disregards entirely the first ruling on the subject of the proviso and the judicial support of that rule to which we have hereinbefore referred.

The reference in that case to the well-known fact that this legislation was before Congress for many months, and the inference drawn therefrom, seems to be answered by the fact that the legislative history of the act shows that it was framed and altered and changed and amended in the closing hours of an exciting session of Congress, and after its passage a general resolution making a change in the text was made.

The suggestion that Congress, in order to give the construction contended for by the Government, could well have used the special terms applied in the supplemental safety-appliance act of April 14, 1910, is of doubtful force when it appears that the latter act was another piece of legislation by another Congress at a later date and upon another subject.

A similar argument was made as to the construction of another clause of this statute by counsel for the appellant in *Missouri, Kansas & Texas Ry. Co.* v. *United States* (231 U. S., 114).

" Had it been intended that a penalty should be incurred for each employee Congress would have clearly so provided as it did in other statutes " (citing statutes), but the Supreme Court in the Missouri, Kansas & Texas case in its decision gave no force to this suggestion.

Justice Holmes, in the *Missouri, Kansas & Texas Ry. Co.* v. *United States* (231 U. S., 118), says:

> But unless the statute requires a different view, to call the delay of the train the act that produced the wrong is to beg the question. (Citing cases.) The statute was not violated by the delay. That may have made keeping the men overtime more likely, but was not in itself wrongful conduct *quoad hoc.*
>
> The wrongful act was keeping an employee at work, and that act was distinct as to each employee so kept.

And so we contend that the proviso must be considered to mean that the act shall not apply where the casualty, etc., necessarily causes the keeping of the men overtime. Casualties may cause delays which make keeping the men overtime necessary. Unless they *cause* the overtime they do not excuse.

Judge Sawtelle further says (p. 1006):

> If the officers or agents of the carrier in charge of such train crew knew of the existence of or could have foreseen the casualty, etc., before such crew started on its run, the statute would apply, regardless of the delay caused thereby, and the railroad company requiring or permitting such crew to continue on duty after 16 hours would, in such case, be liable to the penalty provided by the statute.

Now, why should not the same logic apply to similar knowledge before the train left any other

terminal? Why should there be a qualification of terminal to mean initial terminal?

The plain wording of the act is "a terminal," naturally meaning any terminal.

The construction of the act by Judge Sawtelle seems to amend the act by changing the words "a terminal" to "the terminal or *starting point.*"

But Congress deliberately changed the words "his terminal," which might properly be susceptible of the meaning given to the proviso by Judge Sawtelle and by the appellants here, to the broader, more inclusive, and comprehensive words "a terminal."

This is a meaning plainly in accord with the wording of the proviso, with the history of the act, and with the purpose and intent of Congress in its enactment.

Perhaps the crux of the whole case is this:

Unless the *requirement* or *permission* of the *excess* service is a *necessary* consequence of a casualty, etc., the whole purpose and intent of the act indicates such requirement and permission is unlawful, but in so far as excess service is *necessary* to bring the train into the field of normal railroad operation such service is excused under the proviso.

After *delays* from excusable causes *are over* and the train reaches relay points, terminals, or other places where it is *practicable* to relieve a train crew, the excuses named in the proviso are not available as a defense for further requirement of service if the 16-hour period has then been reached. As

there was no suggestion in the answer that the relief of this crew at the end of 16 hours, or as soon thereafter as was practicable, was prevented by the unavoidable accident referred to, it was insufficient as a statement of defense.

Congress expressly provided in section 2 of the hours of service act that "whenever any such employee of such common carrier shall have been on duty for 16 hours he shall be relieved * * *." A defense therefore to the act must show a necessary connection between the casualty or unavoidable accident and the noncompliance with the obligation to relieve. To show delay of a train is not sufficient. The relation of the casualty or unavoidable accident as an obstacle to the relief of the train crew at the expiration of 16 hours must be indicated in order to state a defense.

No sufficient allegation of unavoidable accident in answer.

The defendant's answer admits the excess service and sets up that the train, on which the persons constituting the crew of extra No. 2794 were employed, was delayed and detained en route * * * for the period of 1 hour and 30 minutes on account of and by reason of the said train breaking in two.

The mere breaking in two of a train is not, under all conditions and at all times, an unavoidable accident.

The break in two may be a mere parting of the train from a disconnection of the couplers or be-

cause the couplers are somewhat worn, but we will treat the case upon the assumption that the break-in-two in this case was due to defective couplers or to the breaking of the couplers or to the pulling out of a drawbar.

This is not of such an unusual occurrence as to be regarded as within the terms of the proviso relating to "casualty, or unavoidable accident, or act of God."

In order that the court may realize the frequency with which men are kept on duty by reason of defects in coupler equipment attention is called to the Statistical Analysis of Carriers Monthly Hours of Service Reports for the fiscal year ending June 30, 1913, published by the Interstate Commerce Commission, November, 1913. By this analysis it appears that *out of a total of 261,332* railroad employees retained on duty in excess of the statutory period *33,360 of these cases* of excess service were reported to have been *due to coupler and drawbar defects.*

Pulling out of drawbars can generally be attributed to two causes:

(*a*) *Failure to properly inspect the car, or* (*b*) *unfair usage by the engineer in handling the train.*

(*a*) Unless in a case of clear breaking in the part of the coupler head itself, the defect in a coupler, which tends to make it break and draw out, is manifested by the weak condition of the draft rigging and pocket attachments, and may be discovered by the inspector by a careful examination and inspec-

tion of that part of the equipment. The most marked manifestation of weakness noticeable upon inspection would be the loose condition of the draft rigging, the failure of the draft bolts to be properly tightened up, and failure to have the slack in the draft springs properly adjusted.

(*b*) *Pulled-out drawbars sometimes result from unfair usage.*

This may be caused by the improper use of the air brake; by reversing the engine; by attempting to take up the slack violently when it is necessary to start heavy trains; using too much steam in starting; stopping the train too quickly by emergency applications of the air; by sudden stops; by not waiting until the train gets in motion before giving the engine full head of steam.

In the defendant's answer there is no allegation of inspection or diligence in seeing that the coupling apparatus in use on the train in question was in serviceable condition, and no allegation that the breaking in two of said train was without negligence.

Breaking in two of trains by reason of defective couplers; or by reason of overloading the train; or by reason of sudden starting of the train; putting undue strain upon the coupling apparatus; are not so unusual in railroading as to give to such an occurrence the gravity and seriousness suggested by the terms "casualty," "unavoidable accident," or "act of God" named in the proviso.

Do they not come within the same category as hot boxes? As to hot boxes, District Judge Trieber said, in *United States* v. *Kansas City Southern Railway Company* (189 Fed., 471):

> The officials of defendant could reasonably anticipate that hot boxes are likely to occur on every train, more especially on freight trains such as these were, and it is their duty to take that fact, as well as the frequency with which other trains would be met, into consideration in establishing division or terminal yards, and determining the distances for them. If they failed to do so, and by reason of such failure crews on trains remained on duty for a longer period than 16 consecutive hours, it is guilty of a violation of this act.

In the case of *United States* v. *Kansas City Southern Railway Company* (202 Fed., 828) involving, among other things, delays caused by *defective flues* on the engine and a defective shaker rod, the court said:

> To bring itself within the exceptions stated the carrier must be held to as high a degree of diligence and foresight as may be consistent with the object aimed at and the practical operation of its railroad. Conformably to this view, it has been uniformly held by the courts that ordinarily delays in starting trains by reason of the fact that another train is late, from side tracking to give superior trains the right of way if the meeting of such trains could have been anticipated at the time of leaving the starting point,

> from getting out of steam and cleaning fires, *from defects in equipment,* from switching, from time taken for meals, and, in short, from all the usual causes incidental to operation are not, standing alone, valid excuses within the meaning of this proviso. The carrier must go still further and show that such delays could not have been foreseen and prevented by exercise of the high degree of diligence demanded.

The case just cited is also authority for the proposition that—

> The excuses embodied in the proviso are separate and affirmative defenses (*C. B. & Q. R. Co.* v. *U. S.* (C. C. A.), 195 Fed., 241), which must be pleaded in the answer; and the burden is upon the defendant to sustain such allegations. Counsel for the railway company recognized this rule by the particularity with which they pleaded a latent defect in the coal, both at the outset and later by amendment, and also by assuming the burden of proof. If reliance was placed upon defects in the engine, such as a broken shaker rod and leaky flues, these defects should have been pleaded. The Government should have been advised of the defenses it would be required to meet. The answer contains no such specific averments, and a general denial was insufficient for the purpose.

And so in the case at bar.

The answer fails to establish any necessary relation between the overservice and the failure of the

railroad to relieve these employees at the expiration of the sixteen hours' service.

REPLY TO DEFENDANT IN ERROR'S BRIEF.

On pages 9 and 10 of the brief of defendant in error there appears a quotation from Senator Bacon in the course of the debate in relation to the bill which finally resulted in the statute now under consideration while the bill was on its passage.

Debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body. (*United States* v. *Union P. R. R. Company,* 91 U. S., 72, 79; *Aldridge et al.* v. *Williams,* 3 How., 9, 24, Taney, C. J.; *Preston* v. *Browder,* 1 Wheat., 120; *Mitchell* v. *Great Works M. & M. Company,* 2 Story, 648, 653, 654; *Queen* v. *Hertford College,* 2 Q. B. D., 693, 707.)

Averments in answer of railroad in this case do not bring it within the rule in Missouri Pacific case.

The defendant in error cites in its brief (page 25 et seq.) the full text of the opinion in the case of the *United States* against *Missouri Pacific Railway Company* (213 Fed., 169). That case, however, is clearly to be distinguished from the case at bar in this, that in the Missouri Pacific case there was an averment in the answer of the railroad "*that through no fault or negligence of the defendant company,* its agent or servant, a derailment occurred on the line of the defendant," the court in

that case saying that "this is an averment that, however high the degree of diligence and foresight required in regard to this derailment, the defendant exercised that degree, for so only could it have been without fault or negligence." This vital difference between the two cases renders it unnecessary to consider the other points relied on in the Missouri Pacific Railway case.

The defendant in error quotes twice in its brief paragraphs in the original brief of the Government as follows:

"In the case now under consideration the train was delayed by an unavoidable accident." And, "While the proceedings in the instant case ask credit only for the time lost by reason of an unavoidable accident," etc.

It is manifest that in each of these instances the statement made in the original brief of the Government referred only to the claim of the railroad that the train was delayed by an unavoidable accident. This is specially true in the second instance where reference is made to the pleadings of the railroad.

In the first quotation the meaning intended to be conveyed would have been clearer if the statement had been made that the train was delayed by occurrences which the defendant claimed to be an unavoidable accident. The continuation of the sentence is intended merely to call attention to the necessity of having men who have not been overfatigued by long service in control of train opera-

tions because of the frequency of accidents peculiarly incident to train operation.

It is difficult to understand why the learned counsel of the defendant in error gives so much space to the opinion of Circuit Judge Grosscup in the case of *Atchison, Topeka & Santa Fe Railway* against *United States* (177 Fed., 114), and why emphasis is placed upon those parts of the opinion which assert that "the statute was enacted in view of the customs of the land," and "with custom as a background."

The Supreme Court afterwards reviewed that case, and in its opinion made no reference to the *customary* operation of railroads. The suggestion, however, of custom of railroads gives the Government an opportunity to call to the attention of the court a document to which we are at liberty to refer, Statistical Analysis of Carriers' Monthly Hours of Service Reports covering all instances in which employees were on duty during the fiscal year ending June 30, 1914, for longer periods than those provided by the Federal Hours-of-Service Act. (Interstate Commerce Commission, Nevember, 1913.)

From this analysis it appears that during one year the railroads had 261,332 men employed for a longer period than that fixed by the statute. And so, under the operation of a mandatory statute fixing the limit of service, there are more than 250,000 cases of service in excess of the statutory period in one year.

It does not seem as if much light can be gained as to the construction of the act from the customs of the railroads.

The statute was enacted to put *an end to the custom* which permitted excessive periods of service, and its interpretation should manifestly be such as to effectuate the congressional intent.

The act was clearly intended to do away with the custom of requiring service in excess of the period fixed.

Only *gravely exceptional causes* were to excuse.

Customs of railroads to require service for longer periods than those fixed in the statute have no force or weight in the interpretation of an act of this character, or in enabling the court to reach a conclusion on a demurrer to an answer.

No question in the case in which Judge Grosscup delivered the opinion quoted is involved in the case at bar.

No authority can be found in any of the adjudications in any of our courts upon the hours-of-service law for the contention of the defendant in error that there are more than three cases of exception, and these are: First, casualty; second, unavoidable accident; third, act of God.

The Government contends that the latter part of the proviso which necessarily calls for the construction is to be read as if worded, "Nor where a delay necessarily causing excess service of an employee was the result of either of the foregoing causes, which causes of delay were not known to the car-

rier * * * at the time said employee left a terminal and which could not have been foreseen."

Otherwise any delay from *any* cause unkown when an employee left a terminal would be an excuse.

Unless the proviso is limited to the three causes specified, then it is unlimited in its application to *any* cause which occurs after an employee leaves a terminal.

This would render the statute practically a dead letter.

And the decisions of the courts have not given countenance to any such construction of the statute.

The suggested interpretation of a statement of Judge Holmes in *Missouri, Kansas & Texas Railway Company* v. *United States,* 34 Sup. Ct. Ref., 26, 27, quoted in defendant in error's brief (p. 50), with an intimation that it was treated *as undisputed,* has absolutely no foundation.

The learned justice was only stating the contention of the railroad in that case.

He said, "*It is urged* that the delay was the result of a cause * * * and that therefore * * * the act does not apply."

The mere recitation of a claim by one of the parties to an action as to a legal proposition affords no foundation for an inference that the court in any manner gives its support to such proposition.

Among the cases which seem to be conclusive against the contention of the defendant are: *United States* v. *Kansas City Southern Railway*

Co. (189 Fed., 471); *United States* v. *Kansas City Southern Railway Co.* (202 Fed., 828); *United States* v. *Denver & R. G. R. Co.* (197 Fed., 629); *United States* v. *Chicago, M. & P. S. Ry. Co.* (197 Fed., 624).

A decision October 30, 1914 (not yet reported), of District Judge Sessions, Western District of Michigan, in the case of *United States* vs. *Chicago & Northwestern Railway Company,* although involving telegraph operators, gives some light upon the questions here involved.

In that case the court said: "It thus appears that the accident which caused the delay in the departure of the circus train occurred a considerable time before the expiration of the period during which the operator might lawfully have worked. He had been continuously on duty since seven o'clock in the morning, and the train was not due to leave until nine o'clock at night. There is no showing that another operator could not have been procured. Accidents of this character often happen and are to be expected. They furnish neither justification nor excuse for a violation of a remedial statute like the one under consideration. (*United States* v. *Southern Pacific Railway Company,* 209 Fed. Rep., 562.)

The learned counsel for defendant in their brief (p. 33) italicize the paragraph in Judge Sanborn's opinion in the Missouri Pacific case as follows:

"*But this is not an action for the negligence of the company in failing to procure a relief operator*

within a reasonable time." To be sure it was not. Nor is there any such action known to the law.

We assume that the learned court by this language meant to distinguish between an action for *failure to relieve* the operator in the case then under consideration and an action for *requiring* him to *remain on duty* in excess of period fixed.

But an action for " failure to relieve " lies only when the employee is one of the sixteen-hour class and is never maintainable where the employee is a telegraph operator.

In any event, the quotation so emphasized can have no application here, for the statute itself in its application to a train crew expressly provides that where an employee has been continuously on duty for sixteen hours " *he shall be relieved.*"

If under a count alleging *service* in excess of sixteen hours the facts proved show service beyond the period when the *statute* provides " *he shall be relieved,*" then the service beyond that period is unlawful and the action may be maintained as alleged.

CONCLUSION.

No interpretation which makes lawful service in train operation for more than sixteen hours, unless such excess service is *necessarily* the *result* of excusable causes, ought to be reached if the purpose and object of the statute is kept in mind.

When it is practicable to relieve after completion of sixteen hours' train work, then the excess

service is not a necessary consequence of previous delays. It is then the result of negligence. Such negligence is inexcusable and affords no reasonable basis for a defence under this statute.

Whereas in the case at bar no effort is made to comply with the duty to relieve employees at the expiration of sixteen hours' service, it is respectfully submitted that further service was unlawful.

Respectfully submitted.

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